IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6016 OF 2005

Sunil Atmaram More ...Applicant
Vs.
The State of Maharashtra ...Respondent
(At the instance of DCB CID
Unit-1, Mumbai)

Shri. Prakash N.Wagh for the Applicant.
Shri. K.V. Saste, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 20, 2005.

P.C.:

1. Heard the learned Counsel appearing for the Applicant and the learned A.P.P. for the State. This is an Application for Regular Bail filed by the Applicant.

2. The offence alleged is under sections 376(2)(a)(b), 342, 323, 354, 406(2) of the Indian Penal Code. The offence is allegedly committed by the Applicant who is a Police Constable while he was on duty at Meghdoot Police Chowky at Marine Drive, Mumbai. The first informant is a sixteen year old Junior College student. According to the first informant- prosecutrix, she was sitting with her friends on parapet of Marine Drive Promenade near fly-over bridge, Marine Drive, Mumbai. The prosecutrix was sitting close to one of her friend. At that time, one watchman came there and he asked prosecutrix and her friends to come to the Police

Chowky. When the prosecutrix and her friends went to the police chowky where the Applicant was present. The Applicant asked the prosecutrix and her friend as to why they were misbehaving in the public place. At that time, the prosecutrix and his friends requested the Applicant to allow them to leave the place. The case of the prosecutrix is that the Applicant asked her to wait in the said chowky and allowed her friends to go back. When the friends of the prosecutrix declined to move, the Applicant allegedly threatened that if they fail to leave the place, he will confine them in the police chowky and that is how they left the chowky. The allegation of the prosecutrix is that she was made to sit in the chowky and the Applicant went away for some time. The Applicant consumed liquor and came back to the chowky and bolted the door of the chowky from inside. When the Applicant started misbehaving with the prosecutrix, she tried to shout. However, the Applicant allegedly clamped her mouth and he slapped her. Thereafter, the prosecutrix was made to lie on the ground and the allegation of the prosecutrix is that the Applicant had forcible sexual intercourse with her. The incident went on for about one hour. At that time, many persons including the friends of the prosecutrix gathered near the chowky. Case of the prosecutrix is that as threats were given by the Applicant, she did not scream. Thereafter, she somehow succeeded to come out of the police chowky.

The Applicant was arrested near spot by the police.

2. The learned Counsel for the Applicant has invited my attention to the various documents produced by the prosecution alongwith the chargesheet. He submitted that prosecutrix has made material and important improvements in her case in her subsequent statement. He urged that in the subsequent statement of the prosecutrix, a completely different and new case has been made out. He invited my attention to the reports of the Chemical Analyser and the report of the DNA analysis. He submitted that as the report of the DNA analysis and the Chemical Analyser are against the prosecution, a new statement of the prosecutrix was recorded for making improvements in the case. He submitted that apart from inconsistent version of the prosecutrix, the reports of the experts are against the prosecution and therefore, after completion of investigation and filing of chargesheet, the Applicant must be enlarged on bail. He submitted that considering the nature of material on record, this is a fit case for grant of bail.

3. I have considered the submissions. It is not in dispute that at the time at which offence has been allegedly committed, the Applicant was on duty as a Police Constable in the police chowky at Marine Lines, Mumbai. The offence has been committed in the

afternoon. There is a clear version of the prosecutrix implicating the Applicant in offence of heinous nature.

4. There may be some substance in the submission of the learned Advocate for the Applicant that the report of the DNA analysis and the reports of the Chemical Analyser may not be completely in favour of the prosecution. However, the reports are not inconsistent with the supplementary statement of the prosecutrix recorded on the next day of the incident. It is pertitnent to note that as per the medical opinion, the age of the prosecutrix appears to be between sixteen to seventeen years. There is medical examiation certificate dated 25th April, 2005 issued by the Doctors of J.J. Hospital. The said certificate states that based on the victim’s history and physical examination, there is possibility of sexual assault/intercourse. The report, however, states that final opinion will be given on the basis of Chemical Analysis report.

5. The Apex Court has repeatedly held that no corroboration is required for the evidence of a victim of a sexual assault. The Apex Court in a decision reported in (1996) Supreme Court Cases Page 384 (State of Punjab Vs. Gurmit Singh and Others) held that testimony of victim of sexual assault is vital and

unless there are compelling reasons which necessitate looking for corroboration of her statement, the court should find no difficulty in acting on testimony of victim of sexual assault alone for convicting an accused where her testimony inspires confidence. The Apex Court observed that seeking corroboration of her statement before relying upon the same, as the rule, in such cases amounts to adding insult to injury. The Apex Court observed that while appreciating the evidence of the prosecutrix, the court in a given case may look for assurance of her statement to satisfy judicial conscience. Minor contradictions in the statements of prosecutrix is no ground to throw out prosecution case.

7. At this stage, it cannot be ignored that the prosecutrix is a minor student. Even assuming that there are some contradictions in the version of the prosecutrix, at this stage, no importance can be attached to the same. A different approach is contemplated while considering the version of the prosecutrix and broader probabilities are required to be examined without getting swayed by minor contradictions. In this case, the allegation is against a Police Constable who was on duty. There is material on record to show that he was intoxicated at that time. Immediately after the incident after coming out of chowky, she disclosed to the persons

gathered outside the chowky that the Applicant has commtited the offence. The Police arrested the Applicant at the spot. The seriousness of the offence and larger interests of public are the factors which are required to be considered while considering the prayer for bail.

8. The case is fixed for framing charge. Considering the nature of the offence, the trial can be expediated. The learned A.P.P. on instruction stated that though as many as seventy persons are cited as prosecution witnesses, but in all probability the prosecution may examine above twenty-five witnesses. In my view, considering the facts and circumstances, the trial needs to be concluded early.

9. Hence, I pass the following order:

: O R D E R :

i) Application is rejected

ii) The learned Additional Sessions Judge is directed to give priority to the trial of this case. After having regard to the pendency of the cases in his court, the learned Additional Sessions Judge may even consider of proceeding with the trial on the day to day basis. If it is not possible for the learned

Judge to proceed with the case on day to day basis, he will endeavour to devote atleast one or two days in a week to the case.

iii) This is a fit case where the learned Additional Sessions Judge will make an endeavour to conclude the trial as expeditiously as possible and preferrably on or before 30th April, 2006.

iv) The observations which are made in this order are for limited purposes for considering the prayer for grant of Bail and the same shall not be construed as any concluded finding.

JUDGE

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